IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7860 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BHUPATBHAI SAMATBHAI DHADHAL - Petitioner(s)

Versus

THE DIST. MAGISTRATE &3 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Petitioner No(s).: 1.

MR AR SHAIKH for Petitioner No(s).: 1.

Mr.P.D.Bhate, AGPfor Respondent No(s).: 1,2,4.

RULE SERVED BY DS for Respondent No(s).: 1,2,3.

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CORAM :HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 23/06/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 11.3.2005 passed by the District Magistrate, Surendranagar in exercise of the powers conferred upon her under sub-section(2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (“the Act” for short), as, the District Magistrate, Surendrangar acting under the Act arrived at the subjective satisfaction that it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of supplies of essential commodities like Solvents (L.D.O), Neptha, Petrol which is essential to the community.

1. Along with the detention order, the detenu was also served with the grounds of detention of the same date.

2. Heard the learned advocate appearing for the petitioner Mr.A.R.Shaikh, learned AGP Mr.Bhate for respondent nos.1, 2 and 4 and Mr.M.A.Shaikh for respondent no.3. Affidavit-in-reply filed on behalf of respondent No. 2 and counter affidavit on behalf of the Union of India were also taken into consideration.

3. Learned advocate appearing on behalf of the petitioner detenu raised manifold contentions. He has drawn the attention of this Court to a document at page 27 in the compilation. The document appears to be a remand report submitted by the Circle Police Inspector, Chotila to the Magistrate, Chotila about the custody of the persons arrested from Shiv Laheri Hotel, Chotila. Upon perusing the said document, it clearly transpires that the said document is illegible. It reveals from the grounds of detention as placed on record that six persons were arrested at the spot and the criminal complaint came to be filed against these six persons and Mangalubhai Jilubhai. In that view of the matter, when the detaining authority has taken this document into consideration, this document becomes vital document affecting the right of the detenu of making effective representation. The facts of this case are squarely covered by the decision in the case of P.S.Chandel Vs. District Magistrate, reported in 1991(2) GLR 753 wherein the Division Bench has observed in para 3 as under.:

4. In that view of the matter, it is apparently clear that the detaining authority has failed to supply legible copy of the above referred document to the detenu for making effective representation, and, therefore, it is in violation of the right of the detenu under Article 22(5) of the Constitution. Under the circumstances, the detention order cannot be sustained and deserves to be quashed and set aside on this ground alone.

1. In view of what is stated above, the petition is allowed. The order of detention dated 11.3.2005 is quashed and set aside. The detenu Bhupatbhai Samatbhai Dhadhal is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

srilatha